

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Amendment of the Commission's Rules)
to Establish Competitive Service)
Safeguards for Local Exchange Carrier)
Provision of Commercial Mobile Radio)
Service)
)
Implementation of Section 601(d) of)
the Telecommunications Act of 1996.)
)

WT Docket No. 96-162

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**OPPOSITION
OF
GUAM TELEPHONE AUTHORITY**

Guam Telephone Authority ("GTA"), by its attorneys, hereby opposes the Petition for Partial Reconsideration ("Petition") filed by Guam Cellular & Paging, Inc. ("Guam Cellular"). Guam Cellular asks the Commission to reconsider the structural separation requirements in the above-captioned *Report and Order*, FCC 97-352, 62 Fed. Reg. 63, 864 to declare that the rural telephone company exemption not be granted to GTA or any similarly situated Local Exchange Carriers ("LECs").¹

¹ In addition, Guam Cellular also asks that Section 20.20(d)(2) be amended to provide that a copy of a LEC petition for suspension of the structural separation requirements must be served upon each Commercial Mobile Radio Service ("CMRS") provider interconnected with that LEC. GTA takes no position on this request.

OHY

The *Report and Order* imposed separate subsidiary requirements upon all Bell Operating Companies and all independent LECs for CMRS operations, except for rural telephone companies as defined by the Communications Act of 1934, as amended. This rural carrier exemption was based upon the Commission's concern that rural carriers might not have the resources to comply with the separate subsidiary requirements and still provide CMRS. The Commission also found that relieving rural companies of the burdens of compliance would promote the goals Congress set in Section 309(j) of the Act to promote the deployment and development of new technologies in rural areas. Guam Cellular seeks to have the Commission maintain the rural telephone exemption for all rural carriers except GTA.

GTA is the incumbent provider of local exchange services on Guam, a U.S. territory located some 6000 miles from the mainland. GTA also provides cellular service, and hopes soon to provide PCS service on Guam. Guam Cellular is a competitor of GTA, which believes itself disadvantaged by GTA's incumbency and government-owned status. To remedy the situation, Guam Cellular argues that GTA should not be considered a rural telephone company. It bases its argument on three factors: GTA's financial resources; its "dense" population; and GTA's conduct. None of these factors is sufficient to rebut Congress' definition of who is, and who is not, a rural telephone company.

Before addressing Guam Cellular's three factors, it is appropriate to consider a procedural matter. The relief sought by Guam Cellular -- modifying the rural telco exemption as it applies to GTA -- is not the proper subject for a Petition for Reconsideration of the

Report and Order. Rather, the Commission has provided a remedy for a grievance against a particular rural telephone company:

A competing carrier, interconnected with the rural carrier . . . may petition the Commission to remove the exemption . . . where the rural telephone company has engaged in anticompetitive conduct, such as discrimination.²

Thus, the Commission has established the method -- and the standard -- for removal of the rural telephone company exemption. It is entirely inappropriate to single out one rural telephone company in the context of reconsidering the entire rulemaking, particularly when neither Guam Cellular nor GTA were participants in the rulemaking below. If Guam Cellular believes GTA should not be subject to the rural telco exemption, it should file a Petition for Removal alleging anti-competitive conduct.³ We believe that Guam Cellular rejected this approach because it recognized that it could not meet the burden of showing that GTA has engaged in anticompetitive conduct. The Commission should dismiss the Petition for Reconsideration as an improper substitute for the Petition for Removal established in the Commission's Rules.

² *Report and Order*, ¶ 71.

³ Guam Cellular has made these allegations in a complaint before the Guam Public Utilities Commission, which complaint was recently dismissed. *See, Recommended Decision*, Docket 97-03, December 10, 1997.

Financial Resources

Turning now to Guam Cellular's substantive argument that GTA enjoys superior financial resources, Guam Cellular overvalues GTA's status as an autonomous agency of the Government of Guam. Guam Cellular implies that GTA, as a government-owned agency has a financial advantage over competitors. In fact, as the Commission is aware, government-owned status is more often a curse than a blessing, as the rash of international privatizations proves.

Guam Cellular states that the "full faith and credit" of the Government of Guam lies behind GTA.⁴ However, the Organic Act of Guam imposes a debt ceiling on public indebtedness.⁵ Since GTA bonds backed by the Government of Guam are considered public indebtedness⁶, GTA must receive legislative approval before it can incur debt. Rather than a blessing, this is a curse in a competitive market where fast access to money provides an advantage. Moreover, the Guam legislature is far from a "rubber stamp" on GTA's requests. Indeed, GTA's competitors, such as Guam Cellular, virtually assure that any GTA initiative will receive the highest level of scrutiny and, often, opposition, as was the case when GTA proposed entering the long distance market.

⁴ See *Petition*, para. 5.

⁵ 48 U.S.C. § 15423(a).

⁶ See *GTA v. Rivera*, 416 F. Supp. 283 (D.C. Guam 1976).

Adding to the financial burden imposed by Government of Guam ownership is a relatively new provision of the Guam law, intended to compensate government for the "risk" incurred in operating telephone and other utilities. Under this provision, GTA is obligated to transfer its share of \$3.5 million a year into the General Fund of Guam as a "payment-in-lieu-of-taxes".⁷

Most importantly, Guam Cellular, in its discussion of "full faith and credit", fails to consider the well-known financial challenges faced by the Territory of Guam.⁸ Moreover, notwithstanding the Commission's belief that GTA has "substantial financial resources," GTA does not have significant operating surpluses. Indeed, its net earnings for the year ended September 30, 1997 decreased to \$468,567 (audited) from the previous year of \$5,400,671 (audited). GTA simply does not enjoy the healthy revenues of other telephone companies. According to the United States Telephone Association publication "*Phone Facts*", GTA ranked among the lowest companies in a comparison of revenues and access lines, with revenues of only \$535 per access line.⁹

In sum, it is clear that GTA does not enjoy a surfeit of financial resources, contrary to Guam Cellular's allegations. Indeed, it is entirely possible that GTA's plans for PCS

⁷ See 5 Guam Code § 22421.

⁸ See *Business Wire*, October 23, 1997, "Standard & Poor's Affirms Guam Bonds/Outlook Still Negative" (Attachment A).

⁹ As compared with, e.g., \$988 for the Puerto Rico Telephone Company, \$680 for the Anchorage Telephone Utility and \$995 for the Virgin Islands Telephone Company. See *USTA Phone Facts 1997* (Attachment B). Of the thirty-five largest telephone companies, GTA ranks 32nd in revenue per access line.

would have to be postponed if GTA were required to incur the expense of creating a separate CMRS subsidiary.

Population Density

Secondly, Guam Cellular argues that GTA isn't a "real" rural telco because its population is not spread out through a sparsely populated wilderness. This argument fails to take into consideration Guam's mountainous and rugged Southern Region. It also fails to take into account Guam's remote location which adds significant time and expense to virtually every project and acquisition.

More important, perhaps, is the fact that no matter how dense or how rugged Guam is, GTA fits squarely within the congressional definition of rural telephone company. It is not within Guam Cellular's province to second-guess Congress in deciding what is, and what is not, rural.¹⁰

GTA's Conduct

Guam Cellular's third argument is that GTA's past and current conduct warrants removal of the exemption. Guam Cellular cites the hoary IT&E case¹¹ without mentioning the

¹⁰ GTA also fits within the Department of Agriculture determination of eligibility for Rural Utilities Service ("RUS") loans. Indeed, GTA is a major beneficiary of RUS loan programs, having borrowed over \$150 million, of which about \$125 million is still outstanding.

¹¹ *IT&E Overseas, Inc.*, 7 FCC Rcd 4023 (1992).

six-year program of compliance that culminated in July of 1997 with accomplishments unmatched by any other telephone company. Not entirely without problems, GTA nevertheless managed to convert its entire network to Feature Group D protocol *on the same day* that it converted to North American Numbering Plan numbering, *on the same day* that it joined in the National Exchange Carrier Association ("NECA") cost-based tariff. On July 1, 1997, the four-step Integrated Compliance Plan was completed, removing any validity from the accusations in the IT&E case.

Guam Cellular refers to a pending complaint before the Guam Public Utilities Commission alleging anticompetitive conduct, but fails to reveal that the Administrative Law Judge recommended dismissal of that complaint some three weeks before this Petition was filed.¹² Guam Cellular also mentions interconnection negotiations. While these have been slow to begin, there is now progress being made, including a meeting between the principals on Guam. GTA hopes that these negotiations will result in an agreement in the near future since Guam Cellular has withheld all payment to GTA pending agreement. As is clear from the discussion above, GTA's financial resources are not so substantial as to be able to withstand this type of pressure.

Finally, Guam Cellular alleges generally that GTA's conduct has deprived it of a level playing field. The proof, as they say, is in the pudding. According to GTA's traffic statistics, Guam Cellular enjoys a much larger share of the cellular market than does GTA's

¹² *Supra*, note 3.

affiliate, to wit, 60% compared with 40%. Given that fact, GTA's conduct cannot be so damaging to Guam Cellular as Guam Cellular would have the Commission believe.

Conclusion

Guam Cellular has failed to raise any issues that are worthy of reconsideration by the Commission. GTA recommends that the Commission dismiss or deny the Guam Cellular Petition.

Respectfully submitted,

GUAM TELEPHONE AUTHORITY



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February 10, 1998

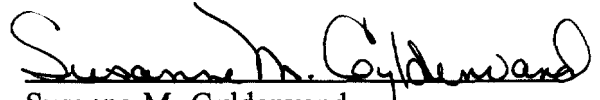
CERTIFICATE OF SERVICE

I, Susanne M. Gyldenvand, certify that on this 10th day of February, 1998, I caused copies of the foregoing Guam Telephone Authority's Opposition to the Petition for Partial Reconsideration to be served by United States mail, first-class postage prepaid, on the following:

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HEADLINE: S&P Affms Guams G.O. Bnds BBB, Outlk Still Neg

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BODY:

S&P CreditWire 10/23/97--Standard & Poor's today affirmed its triple-'B'-rating on Guam's \$ 312 million G.O. bonds. The rating reflects continued progress toward achieving the goals of its fiscal plan presented in June 1995. The outlook remains negative given the continued weak financial position and the need for continued political will to achieve the goals of the plan through the next election cycle. Additional rating factors include: --An economic base heavily dependent on tourism, --A moderate and manageable debt burden, and --Some potential off-balance sheet financial flexibility. Located 3,700 miles to the west of Hawaii and 1,500 miles Southeast of Japan, Guam is the westernmost territory of the U.S. Its economy is largely dependent on Japanese tourism although the U.S. military still has a significant presence on the island given its strategic location. A series of natural disasters, which increased expenditures coupled with already significant general fund budget gaps led to a significant deterioration of Guam's overall financial position and culminated in an annual general fund budget gap that reached as much as \$ 90 million in fiscal 1994. In response, the government in June 1995 unveiled a comprehensive financial plan designed to balance the budget and eliminate the accumulated general fund deficit position by fiscal 1999 as well as maintain a cash reserve sufficient to pay 60 days operating and capital requirements. The financial plan included the adoption of an appropriations cap limiting expenditures to 95 percent of the lower of projected revenues or the previous year's actual revenues. Overall, the government continues to generally track the goals of the fiscal plan. For fiscal 1996, the general fund actually showed a \$ 13 million surplus of revenues over expenditures on a total budget of \$ 530 million. For fiscal 1997, preliminary results indicate that the government will post a further operating surplus of at least \$ 6 million, improving the deficit fund balance by a similar amount. Guam ended fiscal 1996 with an unreserved general fund balance of negative \$ 75 million, or negative 14 percent of expenditures, an improvement over the negative \$ 81 million balance posted in 1995. While the 1996 financial results have not been fully audited, based on past performance, any changes are expected to be minimal. Guam continues to make progress toward its goals established under the fiscal plan. While the government has not achieved all of the cuts it originally sought, the overall goals of the fiscal plan -- eliminating the general fund deficit balance and achieving an operating reserve equal to 60 days of cash -- are still achievable. To date, Guam has made reductions in the general fund or found new revenue sources for about \$ 58.9 million. While this is below the \$ 93.3 million originally envisioned under the fiscal plan, the government expects to work



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Business Wire, October 23, 1997

toward further reductions and reallocations of expenditures in fiscals 1998 and 1999. The government has identified a number of areas where fees could be increased to bring in \$ 40-60 million of additional revenues. In theory, if these measures were taken over the course of the next two years, the goals of the fiscal plan could still be reached by the government's self-imposed 1999 deadline. Fee increases continue to be a major part of the government's effort to make enterprise operations fully accountable and self sufficient. In addition, Guam is exploring its options with respect to the sale of its assets. For example, Guam owns its telephone utility and believes that with new telecommunication legislation encouraging competition, the time may be right to sell the utility. Proceeds from such a sale which could reach in the tens of millions of dollars could be used to reduce the deficit fund balance. The fiscal 1998 budget anticipates further improvements in the fund balance. Nevertheless, it remains crucial for the political will to remain in place to achieve the goals of the fiscal plan. OUTLOOK: NEGATIVE Standard & Poor's will continue to monitor the progress achieved under the government's financial plan. Any significant deviation from the results envisioned under the plan would lead to a rating downgrade, Standard & Poor's said. --CreditWire

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THE TOP 100

Largest Telephone Companies Reporting to USTA, Including Holding Companies¹

IN ORDER OF ACCESS LINES AS OF DECEMBER 31, 1996 ²	ACCESS LINES	OPERATING REVENUES
1. SBC Communications, San Antonio, Texas • (Merged with Pacific Telesis 4/1/97)	35,070,189	\$17,981,557,037
2. BellSouth Corp., Atlanta, Georgia •	21,816,643	14,412,569,000
3. Bell Atlantic Corp., Philadelphia, Pennsylvania • ††	20,222,219	12,699,202,000
4. GTE Corp. (US Only), Stamford, Connecticut •	20,024,695	13,335,950,000
5. Ameritech, Chicago, Illinois •	19,704,000	11,615,200,000
6. NYNEX Corp., New York, New York • ††	19,154,876	12,486,934,000
7. US West, Inc., Englewood, Colorado •	15,424,000	9,831,000,000
8. Sprint Corp., Westwood, Kansas •	7,106,548	5,117,300,000
9. Southern New England Telephone Co., New Haven, Connecticut •	2,118,995	1,363,100,000
10. ALLTEL Corp., Little Rock, Arkansas •	1,681,395	1,169,076,000
11. Puerto Rico Telephone Authority, San Juan, Puerto Rico •	1,189,559	1,175,528,000
12. Frontier Corp., Rochester, New York •	975,642	643,013,000
13. Cincinnati Bell, Inc., Cincinnati, Ohio •	943,609	650,833,815
14. Citizens Utilities Co., Stamford, Connecticut •	834,180	752,209,000
15. PTI Communications, Inc., Vancouver, Washington ••	559,461	409,015,960
16. Century Telephone Enterprises, Inc., Monroe, Louisiana •	503,562	451,538,000
17. Telephone & Data Systems, Inc., Chicago, Illinois †	484,475	402,629,000
18. Aliant Communications Co., Lincoln, Nebraska ••	267,490	181,609,096
19. C-TEC Corp., Princeton, New Jersey ••	240,255	147,471,000
20. ATU Telecommunications, Anchorage, Alaska	154,792	104,743,934
21. North State Telephone Co., High Point, North Carolina	109,735	57,947,886
22. Roseville Telephone Co., Roseville, California •	108,336	101,307,801
23. Rock Hill Telephone Co., Rock Hill, South Carolina	100,522	70,664,345

THE TOP 100

24. The Concord Telephone Co., Concord, North Carolina	96,547	\$55,499,577
25. Lufkin-Conroe Communications, Co., Lufkin, Texas	89,475	76,554,976
26. Consolidated Communications, Inc., Mattoon, Illinois	88,229	64,205,000
27. Guam Telephone Authority, Tamuning, Guam	67,450	35,876,128
28. Conestoga Telephone & Telegraph Co., Birdsboro, Pennsylvania ••	67,219	39,219,030
29. Horry Telephone Cooperative, Inc., Conway, South Carolina	66,147	33,225,977
30. North Pittsburgh Telephone Co., Gibsonia, Pennsylvania	62,086	52,017,855
31. Standard Telephone Co., Cornelia, Georgia	60,596	52,740,959
32. Virgin Islands Telephone Corp., St. Thomas, Virgin Islands	58,515	57,749,000
33. Denver & Ephrata Telephone and Telegraph Co., Ephrata, Pennsylvania	51,289	35,229,965
34. Pioneer Telephone Co., Inc., Kingfisher, Oklahoma	50,205	52,016,068
35. Farmers Telephone Coop., Inc., Kingstree, South Carolina	48,482	35,475,287
36. Hargray Telephone Co., Inc., Hilton Head, South Carolina	43,896	36,564,597
37. Matanuska Telephone Association, Inc., Palmer, Alaska	41,194	46,614,191
38. Gulf Telephone Co., Foley, Alabama	40,476	33,284,959
39. Lynch Corp., Greenwich, Connecticut	34,830	42,694,000
40. Mankato Citizens Telephone Co., Mankato, Minnesota ••	34,789	24,924,351
41. Telephone Electronics Corp., Jackson, Mississippi	34,352	27,691,803
42. Clifton-Forge-Waynesboro Telephone Co., Waynesboro, Virginia •	34,106	28,279,133
43. MJD Communications, Inc., Charlotte, North Carolina	34,017	29,803,000
44. Fairbanks Municipal Utilities System, Fairbanks, Alaska	33,885	25,946,730
45. Chillicothe Telephone Co., Chillicothe, Ohio	33,077	32,441,215
46. Coastal Utilities, Inc., Hinesville, Georgia	32,904	26,464,367
47. Twin Lakes Telephone Coop., Gainsboro, Tennessee	31,440	N/A
48. EATEL Corp., Inc., Gonzales, Louisiana	31,159	27,643,969
49. Mid-Plains, Inc., Middleton, Wisconsin •	31,034	18,697,879